



# Identification problems: US special education eligibility for English language learners



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## ARTICLE INFO

### Article history:

Received 14 January 2014

Received in revised form 14 August 2014

Accepted 16 August 2014

Available online

### Keywords:

Special education eligibility

Limited English proficiency

Disproportionality

Education policy

Border region, United States

## ABSTRACT

Public schools in the United States are federally mandated to identify and serve all students with disabilities. However, students whose native language is not English are at risk of being inappropriately identified or not identified for special education because issues related to language and culture complicate the identification process. This article presents findings from a qualitative multi-case study of state education agencies, school districts, and schools along the US-Mexico border. Document analysis and in-depth interviews revealed that state and district policies often lack meaningful guidance for educators in the field while bureaucrats working in state educational agencies and school districts are unprepared and lack time, knowledge, and resources to support schools and educators. The findings inform next generation policy initiatives and identify important lines of inquiry for further research.

Published by Elsevier Ltd.

## 1. Introduction

Schools in many nations are now responsible for identifying and providing special education services to students with disabilities (Lehtomaki, Tuomi, & Matonya, 2014; Mitchell, 2010). In the United States, the *Individuals with Disabilities Education Improvement Act* (IDEA) is the federal education mandate that guarantees students with disabilities receive a free and appropriate education and provides guidelines for disability classifications and eligibility processes. Disproportionality and segregation have been pervasive for students of color and those living in poverty since the law's inception more than 35 years ago (US Department of Education: Office of Special Education and Programs, 2009). A gap exists between the expectations of federal policy and what happens at the school level because language embedded in IDEA is broad and at times vague. Between the classroom and the federal levels, there should be state, district, and school policies that help provide details on how IDEA should be implemented, though lore, myth, and misconceptions often shape how those working within schools determine the eligibility of a student for special education.

Though identifying students with disabilities can be difficult when evaluating native English speakers, this process is even more complex for limited English language learners (ELLs).<sup>1</sup> As a result, ELLs are at-risk of being both under- and

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<sup>1</sup> English language learner (ELL) is the main term used throughout this article to describe students whose first language is not English and are in the process of learning the English language. English as second language (ESL) and limited English proficient (LEP) are also commonly used terms to identify students. ESL is used in this paper to describe teachers explicitly trained and assigned to work with ELLs. ESL is also used to identify programs and offices at the district and state level related to the education of ELL students.

over-identified for special education. ELLs are generally underrepresented on special education rosters but tend to be overrepresented in specific special education disability categories, such as Emotional Disturbance and Intellectual Disability (formerly Mental Retardation) (US Department of Education: Office of Special Education and Programs, 2009). Context may also be important to appropriate identification—as the percentage of ELLs who are identified under IDEA in urban school districts exceeds the number of students who speak English as their second language, for example (Donovan & Cross, 2002).

A limited body of research has sought to examine the policies and practices of states, school districts, and schools for the appropriate identification of ELLs for special education. Unfortunately, the limited body of research is not just a problem within the US as researchers outside the US have ignored the topic as well. This exploratory study is a first step that attempts to address that gap by focusing on the US–Mexico border states, districts, and schools. This study focuses on the border region because the states and districts contained therein have historically served a large population of ELLs. The ELL population examined in this study is native Spanish speakers. Findings from this study draw attention to significant shortcomings with regard to state and district policy and practice directed at appropriately identifying ELLs with disabilities and ensuring ELLs are not overrepresented or underrepresented in special education. The contribution of this research stems not only from its critical investigation of the relevant national, state, district, and school policies but also from the way it characterizes and problematizes the knowledge, perspectives, and practices of key actors who operate at multiple levels to identify ELLs for special education services.

Going forward, this article contains five sections. We begin with an overview of issues related to special education and ELLs in the United States. Specifically, we discuss federal education policies and guidelines, national trends, and a range of factors that tend to complicate the appropriate identification of ELLs for special education. In the second section, we address issues related to data collection and analysis. In the third and most extensive section, we present our findings—addressing the state, district, and school levels in turn. A discussion section and a brief conclusion follow this section.

## 2. Special education and ELLs in the United States: Federal education policy, national identification trends, and complicating factors

US schools are mandated to provide a quality education to all students regardless of disability or language. All students have the right to special education and language acquisition programs free of cost if they are found eligible under the requirements put forth in federal mandates. As for the mandates themselves, there are two: the *Elementary and Secondary Education Act (ESEA)* of 1965 (more recently authorized as the *No Child Left Behind Act* of 2001) and the *Individuals with Disabilities Education Improvement Act, 2004*. Both mandates have significant implications for states, districts, schools, and students—and, despite some of the shortcomings presented in this manuscript, each law has made a significant positive impact on the lives of millions of children.

Each year US schools serve a growing population of ELLs and students with disabilities. Over 6 million students in US schools have been identified for special education and related services under IDEA, while more than 4.6 million students were identified as ELLs under ESEA (approximately 10 percent of the entire K-12 student population) (US Department of Education, 2013). Approximately 9 percent of ELLs are also identified as being a student with a disability (Zehler et al., 2003) although there is no student subgroup reported under ESEA. According to the US Department of Education, Office of Special Education Programs (2002), there has been a 14.2 percent increase in ELLs with disabilities between 1987 and 2001. More current national data is not available because districts are not required to collect data on ELL students with disabilities.

IDEA and subsequent court rulings are mostly broad, set minimum baselines for service types and quality, and leave room for states, districts, and schools to implement education policies and programs. Federal policies provide limited guidance for how ELLs with disabilities should be selected for services and do not identify specific indicators to track and measure the progress of ELLs with disabilities as a subgroup. IDEA does mandate that a child cannot be eligible for special education due only to a language proficiency deficit.

To ensure ELLs are not misidentified, assessment and evaluation tools cannot be discriminatory on a racial or cultural basis. When considering whether or not an ELL student has a disability, certain requirements must be met during the evaluation process. IDEA mandates that assessments must be conducted in the student's accustomed manner of communication or language and in a way that clearly identifies what a student knows and can do academically, developmentally, and functionally. Thus, assessment materials, protocols, and procedures should be in the language that best measures the student's potential disability rather than his or her English language skills (National Dissemination Center for Children with Disabilities (NICHCY), 2010).

After data is collected and analyzed from both formal and informal assessments, an eligibility meeting is conducted to determine whether or not the student requires special education and related services. The team that performs these tasks should consist of at least the following individuals: the parent, regular education teacher, special education teacher when appropriate, a representative of the school district, an individual qualified to interpret the instructional implications of evaluation results, and the child when appropriate. If the student is found eligible for special education services, an Individualized Educational Program (IEP) is crafted which includes the type of services and supports needed and the location of where services will be provided.

National data indicate disproportional identification and segregation for Hispanic students. For example, Hispanic students ages 6 through 21 were 1.19 times more likely to be served under IDEA for specific learning disabilities than White students (US Department of Education: Office of Special Education and Programs, 2009). In general, Hispanic students

with disabilities are less likely to be included in the general education classroom than their white peers. Moreover, ELLs with disabilities are even less likely to be included in the general education classroom considering they may receive language services in a more restrictive setting. Scholars in the United States have long acknowledged that a disproportionate amount of children from linguistically and culturally diverse backgrounds are identified for special education services under IDEA (Artiles & Trent, 1994).

A number of factors contribute to misidentification of ELLs. First, the process of disability assessment for ELLs is a work in progress (Rhodes, Ochoa, & Ortiz, 2005). Federal policy guidance is silent on how to protect against disproportionate representation of ELLs in special education. Schools and districts are left without guidance or even a clear mandate for limiting disproportionate representation in special education for ELLs. Second, in early grades, or in the first few years a student is acquiring English, many teachers fail to recognize a disability—instead attributing observations of slow progress and student frustration with the English language acquisition process. In part, this is supported by the trend of lower levels of ELLs being identified as having a disability in early grades (US Department of Education: Office of Special Education and Programs, 2009). Third, during eligibility meetings, team members can struggle determining whether or not a disability exists or if the student's challenges are associated with the English language acquisition process. District personnel have reported not having tools, procedures, or qualified staff to appropriately identify ELLs with disabilities (Zehler et al., 2003). Fourth, and more generally, environmental, cultural, and economic factors may also intersect issues of language acquisition and impact the eligibility process.

It is considered best practice for eligibility teams to collect and analyze a range of informal and formal assessments along with observational notes to increase the team's ability to understand the student's performances and deficits (Sullivan & Castro-Villarreal, 2013). *Individuals with Disabilities Education Improvement Act (2004)* specifically mandates that one assessment cannot be the lone data source in making a disability determination. IDEA also implores schools to utilize a response to intervention (RTI) model as a tool for protecting against over-identification of specific learning disabilities and mandates that states develop alternative processes to traditional discrepancy models.<sup>2</sup>

In terms of the present study, however, an important observation regarding extant literature on the intersection of ELLs and special education is that scant research has probed these issues at the level of individual school districts. One exception is Shepherd, Linn, and Brown (2005)—who looked at 36 school districts along the Texas–Mexico border and found that 30 of them were at-risk for disproportionately identifying ELLs for special education. The study also indicated that districts with a higher proportion of ELLs were more likely to disproportionately identify ELLs with disabilities. Some contributing factors to disproportionality in these districts were associated with a lack of a pre-referral process or local schools not following a district's pre-referral process. Given the dearth of research in this area, further investigation is needed to better understand how districts support or impede disproportionality.

### 3. Methodology

This paper draws on evidence from a larger qualitative case study (Creswell, 2007; Yin, 2009) that explored how principals support both ELLs and students with disabilities. An early finding in the larger study was that principals and teachers lacked knowledge of district and state policy. This was a red flag for the research team and prompted further investigation into state and district policies themselves. The findings reported here derive from an examination of relevant policies and practices within the states and local school districts of interest.

Data were collected from August 2013 to October 2013 and consisted of in-depth interviews, observations, and document collection. In-depth interviews were conducted with teachers, principals, school district administrators, and state education agency administrators in each US state along the Mexico border. School psychologists did not participate in the study because the emphasis of the study at the school level was focused on the knowledge of principals and special education teachers. Interviews with teachers and principals were conducted as part of the larger study and only in schools along the Texas–Mexico border. School-level interviews were used to triangulate findings from district and state policy documents. Follow-up interviews were conducted with state and district personnel to help the research team locate policy documents and clarify emerging questions.

More specifically, each state's top special education official was recruited for participation in this study, though only two participated in interviews. In some instances, the research team was directed to relevant policy coordinators, thereby ensuring that, in these cases, the researchers still acquired the state-level perspective on special education policy for ELLs. Four state-level English Second Language (ESL)/ELL officials were interviewed, as well. At the district level, eight directors of special education were contacted for the study to discuss ELL eligibility processes. This was complemented with six ESL/ELL

<sup>2</sup> A discrepancy model is an assessment method that compares a child's IQ to his or her school performance to determine whether or not the child has a disability. When a significant gap exists between the student's IQ and his or her level of performance, the child may be considered eligible for special education. Historically, the discrepancy model has been the primary method for assessing a learning disability. The approach has been criticized as outdated, ineffective, and contributing to misidentification. The RTI approach differs from the discrepancy model's use of an IQ test and performance on an educational assessment. The RTI approach uses research-based interventions that are monitored and assessed over a pre-determined time period. The student's responsiveness to interventions, which should be evident in data collected by teachers and staff, are utilized in making a determination of the student's eligibility for special education.

program directors or their subordinates were interviewed. Eight principals participated in interviews across each borderland state. In addition, six teachers from Texas schools were interviewed.

Interviews were structured with a core set of questions and lasted approximately 35 min. Documents were collected from each state education agency and from school districts located along the border in California, Arizona, New Mexico, and Texas. Documents collected included: (a) state education agency policies; (b) school district policies and training presentations; (c) school professional development sessions and standard operating procedures; (d) federal, state, and local educational reports related to compliance, implementation, and outcomes for students with disabilities and ELLs. Data collection and analysis occurred simultaneously over the course of the study using Nvivo 9 software. This study has limitations, which include a short data collection timeline, limited access to only schools in Texas, and its focus on only two school districts per state along the US–Mexico border.

## 4. Findings

### 4.1. State

At the state-level, our analysis revealed five findings. First, the policy documents and interviews with state education agency representatives revealed a severe shortage of data related to how states provide guidance to districts or schools. The lack of specificity and clarity from both policy documents and interviewees regarding how they address disability issues for ELLs is an important finding that signals a problem. Put differently, due to the current context of federal education policy in the United States, state education agencies are focusing their attention elsewhere, although, it is important to emphasize that interview participants from state education agencies personnel recognized that ELL-special education issues were important and required greater attention and policy guidance. Each states' office of special education primarily focused on accountability as it relates to IDEA and the indicators the US Department of Education use to measure state accountability for such issues as the percentage of students with disabilities graduating secondary school, suspension rates, post-secondary outcomes, and the timeliness of assessments and evaluations. As noted in the literature review, the US Department of Education does not measure or hold states accountable for a subgroup of ELLs with disabilities.

Second, in the four US–Mexico border states, laws and policies provided limited guidance and typically consisted of language already codified in IDEA. For example, each state policy included the following mandates: (a) procedural safeguards related to the special education process must be provided to parent in their native language; (b) due process hearings should be translated into the parent's native language; (c) the special education eligibility team should be aware of the student's native language and language proficiency prior to providing assessments for special education; and (d) language and other cultural variances should not be diagnosed as a disability. Each of these protections are explicitly detailed in IDEA, in subsequent court rulings, or in US Department of Education policy.

Third, a review of the data indicated that state education agency staff had not been focused on issues related to disproportionality for ELLs. As a result, during the data collection process, state education agency staff were typically unresponsive, very slow to respond, or vague in their responses. More specifically, it was found that this lack of focus manifests in how states collect data related to ELLs and students with disabilities. No state currently collects data that identifies ELLs in special education as a specific subgroup, which makes examining issues associated with ELL-special education disproportionality challenging, complex, and time-consuming for state administrators. To that end, the interviewees themselves—including each state's contact person in special education and three out of four state administrators—not only indicated that this research topic was important but also that they would be interested to learn from the findings of the present study. They acknowledged that this issue was low on the priority agenda. A comment from one state's top special education official was representative of these sentiments:

There really is not policy guidance for ELL students beyond what the federal regs [regulations] say. It is up to districts and schools to follow the regs. ... Can you please send me a copy of the study when it is completed. I think you are doing important work and it would be helpful to know what other states are doing.

Given the importance of these issues, it is revealing – and concerning – that the relevant state education agency staff knew so little about how to address them and that essential information is not collected.

Fourth, it was found that, where participants from the state education agencies were able to speak to the issues of interest here, their knowledge was still broad and limited. For example, on one hand, while two participants were informed enough to know that the IEP team should work with an ESL certified teacher or an ESL committee to determine the appropriate assessments for special education, notably, the participants discussed neither RTI models nor processes associated with culturally relevant assessments and intervention activities. In Texas, participants were able to reference a state law that requires a Language Proficiency Assessment Committee (LPAC) member to be present at an IEP meeting, but could not add detail to how LPAC members are trained to support IEP meetings or what their role should be during IEP meetings. Some states had similar guidance related to having an expert in ESL present during special education eligibility meetings while others did not. Although concerning, these findings may be understandable in light of the final finding.

Specifically, the final finding relates to professional development. The provision of professional development guidance for ELL and special education were separate topics for the state. Thus, a primary reason we found that state education

agencies were not focused on ELL-special education disproportionality was because of the lack of state-level professional development sessions and/or programs that address the intersection of these issues. This is a key finding in that professional development is a primary means by which to respond to gaps in knowledge and compliance around legal and procedural processes.

#### 4.2. District

Findings from the district level were strikingly similar to that of state education agencies. In general, both special education and ESL personnel had limited insight on the issue. The research team was frequently directed back and forth between district special education and ESL departments when asking questions related to how ELLs were identified for special education services. As with the findings from the state level, interview participants provided vague responses while policy texts were similar to state and federal policies. One implication of this is that districts are not primarily focused on the issue. Further evidence of this is that school districts did not have data to identify and track a subgroup for ELLs with disabilities. However, in comparison with state-level actors, school district personnel did have a greater awareness of the issue in general, as well as of possible school-level actions to prevent disproportionality.

As for policy documents themselves, they were generally vague, limited in scope, and often provided little or no guidance related to ELLs. Nevertheless, some school districts included in their special education policy documents additional detail that extended beyond state and federal guidance. One example is San Diego Independent School District's (2009) 162-page special education policy manual, which had an entire section dedicated to the appropriate identification of ELLs. What follows is an example of the specific guidance embedded in that document which related to the identification of students unfamiliar with the English language:

If the student's primary language is not English, the teacher or SST [Student Support Team] members consult with the site English Language Support (ELS) teacher and/or staff from the Office of Language Acquisition (OLA), as needed, to assure that an English Language Data Form has been completed. This form provides information about the student's proficiency in his/her primary language. The teacher and/or SST employ a variety of intervention and support strategies within the general education classroom to accommodate the student's language and cultural background and help resolve the targeted learning and behavior problems. (p. 23)

Importantly, the policy manual also provided a list of interventions related to culture, linguistics, and specific guidance for how a pre-referral team might go about obtaining the necessary information to recommend an ELL student for special education or other educational or behavioral/social interventions. Interventions mentioned in the document included cross-cultural counseling, peer support groups, and providing the student with access to the district's Race/Human Relations and Advocacy Program. The special education manual consistently described and mandated a RTI process with ongoing progress monitoring of students.

In contrast, the Los Angeles Unified School District's Special Education Policies and Procedures Manual (2007) consisted of 354 pages and provided very little guidance for ELL student identification under IDEA. Primarily, the manual only restates state and federal regulations about (a) creating an assessment plan that takes into account a student's language abilities and (b) administering assessments in the language most likely to yield accurate results on what the student can know and do. The manual did include sections for developing IEP's for ELLs and best practices once a student is already identified under IDEA. Similar to the policy manual of the Los Angeles Unified School District was that for Laredo, Texas. This policy manual incorporated federal and state law with district policy throughout a 250-page policy document. This was typical to other border district manuals identified and reviewed for this study.

School district administrators interviewed typically possessed limited information and could only reference policy manuals at a general level. One participant simply said, "We follow the law and what's in the manual." Other interviews made similar statements about following state or federal policies while some noted that there is not functional or sufficient policy in this area. Interviewees did report that appropriately identifying ELLs was a challenge and something with which they knew their schools struggled. They also noted the complexity of the eligibility process and remarked how schools experience difficulty in separating language, culture, and student self-confidence from the manifestation of a disability that qualifies the student for special education. One district administrator captured the challenges, frustrations, and complexities associated with those challenges confronted by schools situated on the border:

We have state regulations and we do the best we can at the District and local level. It [i.e., over representation of LEP students in Special Education] is something we take serious but, it is difficult. It [i.e., differentiating LEP from Special Education] is more of an art form than a science.

#### 4.3. School

Despite school administrators' knowledge and awareness of relevant state and federal policies, we found that these actors were often unclear on how these policies should be enacted within their own schools, both generally and in a variety of different circumstances. That said, general aspects of policy or effective practice were clear for most participants, only the details and nuance to policies and effective practice were often unknown or considered impractical.

On the specific issue of special education eligibility for ELLs, what teachers and principals knew was inconsistent. In the interviews, teachers and administrators tended to focus on individual students, often highlighting the differences across them (the students) when talking about ELLs in the special education process. They were often unable to reference any trainings or policies that guided their practice. In other instances, school staff were confused or had incorrect knowledge about policies. We discuss in further detail each of these issues in the remainder of this section.

The general areas where misconceptions found were associated with special education testing procedures, special education eligibility timelines, and how the ELL eligibility process and other data can be used to support the special education eligibility process. Below are four quotes from different teachers and administrators about ELLs with disabilities that highlight the range of responses.

They (ELLs) can't be found eligible for special education in their first year at a school.

If they have a disability, you usually know right away.

We usually try to have an ESL teacher participate in the IEP meeting to help make sure it's not an issue related to language.

This is a real issue, I mean a real struggle for us here. It's very hard to tell the difference between SLD [Specific Learning Disability] if there is a language barrier. We have our ESL team work with the special education team, we do evaluations, observations, and really try to talk through the issues.

The first quote is incorrect, the second quote highlights a lack of training and knowledge, the third quote highlights administrative and managerial problems that impact collaboration, and the fourth quote demonstrates that determining the special education eligibility for an ELL student is challenging even when ESL teachers are working with a special education team.

Principal, teachers, and related service providers were less clear about how and when ELLs should begin the special education eligibility process. Teachers recognized that it could be difficult to distinguish between a disability and a student struggling due to a limited English proficiency. One teacher's remarks captured what many participants shared about the difficulties of identifying a disability:

Early on, it's hard to tell what students are capable of, especially if they are migrant students and it's not a disability that jumps right out at you. They are often shy, quiet—they have a lot going on in their lives, so it's hard for us to tell what might be causing their difficulties. A lot of them also missed a lot of school in Mexico, so it's hard to tell what's going on.

Our data also underscore that proper identification for special education can be difficult due to non-language issues. For example, teachers shared that many important skills, such as reading, writing, and verbal communication were not only tied to language ability level but also to self-esteem and comfort in the classroom. In the teacher's own words:

Sometimes they have more skills than we even know early on but they are not confident or they are in some way embarrassed. They don't want to stand out or be different. As a result, sometimes it's really hard to know whether or not they are a good reader, writer, or capable of solving grade level work.

As a result, some teachers and staff believed – incorrectly – that an ELL student needed a certain amount of time in a school and a certain level of English proficiency before being considered for special education.

On this last point, some teachers and principals thought that students first had to spend at least a year or two receiving ESL services before they could even be assessed for special education. One teacher shared: "You can't designate a [ELL] student as SPED [(special education student)] until after they have been in school for at least two years, the law says that." A principal shared: "We don't consider our [ELL] students for special education until their second year with us." Other teachers and leaders provided similar statements while only one special education teacher and one principal recognized that IDEA and state policy mandated that any student with a suspected disability must be immediately evaluated for special education and related services.

An area of consensus across all teachers and school administrators was the need to assess students in their native language when appropriate. For their part, the related service providers or special education teachers that provided special education assessments were in fact aware of the federal mandate in IDEA that required assessments to be in the student's native language. Some educators were aware of similar mandates from the state. Providing assessments in Spanish was not difficult and was the norm in many border schools because of the concentration of native Spanish speaking staff, a commonplace in schools along or near the border. Teachers and related service providers even reported having access to testing materials in Spanish and felt prepared to give the assessments. As one school psychologist commented:

Because we are so close to the border, many of us know Spanish are able to interact with our students and learn about them. We test them in Spanish and I like to think we don't misidentify a student because of this.

In this same vein, it was encouraging to find that principals purchase special education assessments in Spanish each year to ensure they implement IDEA.



In regards to migrant students who do not speak any English, most teachers and administrators agreed that they must go through the ELL eligibility process before being considered for special education. However, no teacher or school leader could reference a specific policy mandating this procedure. Upon further inquiry, although participants could not identify which policy provides guidance in this area, they stated that they did recall district level administrators discussing the issue.

To that end, some of the principals stated that district policy and what their district supervisors advised were at odds—especially in relation to special education. One principal's perspective was that district supervisors “just want to keep their numbers down; they have a policy that says one thing but then they say another.” What this principal meant was that the district, the assistant superintendent, and certain principals tried to limit the number of special education students in the school and/or district. Incentives for this type of behavior are often related to accountability policies at the federal and state level. This principal did not feel comfortable expanding any further on the issue, although district administrators and principals in that area had been fired or were under investigation for similar practices.

Another principal revealed that district administrators would question her leadership if too many students were identified as having a disability. She stated: “Each year, they watched how many students were identified [for special education]. If that number seemed too high, they start thinking things aren't going well at the school. They question the instructional program. No principal wants that conversation.” Clearly, principals are in a difficult situation. Beyond knowing and following the letter of the law, principals must also manage district politics. The incentives are such that principals may experience pressure not to correctly identify special education students generally, let alone from among the ELL student population.

Yet the ELL eligibility process was helpful for some schools. Specifically, it might have positively contributed to the appropriate identification of students with disabilities and protected against misidentification because the ELL process data was utilized in the special education eligibility process. For example, some schools collected a range of documents, interviewed parents, and observed the student in a variety of settings. These data were then discussed in making a determination of whether or not the student was eligible for ELL services and what services and supports he or she needed. Afterward, these data could be reused, if necessary, to contribute to a decision related to special education eligibility. One teacher pointed out how the ELL eligibility process lends itself well to the special education IEP process: “A lot of the data collected can be used in the special education process, it allows us to use more of an RTI model rather than just looking at special education assessments and deficits.” However, these processes and actions were not typical across all participants, and it was unclear why there were small pockets of success embedded. As such, this is a prime area on which future research should focus.

Other schools and principals typically viewed the ELL eligibility process and the special education process as being entirely separate. One special education teacher noted that she rarely worked with ESL teachers and that, typically, ESL teachers were too busy to attend special education eligibility meetings. She added, “they are just too busy and I'm too busy. It's hard to make our schedules fit so we can work together.” The principal of this same school admitted to struggling to find the time to coordinate schedules and tasks to improve collaboration between ESL teachers and other teachers, including special education teachers.

## 5. Discussion

This study has been exploratory in nature, with the purpose being to flesh out and highlight a significant policy issue that has been neglected by states, districts, and researchers. Thus, while we are not able to provide solutions for how to respond to the numerous challenges that afflict the process by which ELLs are identified for special education, our findings have helped to illuminate both the nature of this process as well as those areas where fixes are most necessary. To summarize, our findings indicate that, although ELLs and Hispanic students are disproportionately identified for special education and related services, state education agencies and school districts in the border region have been slow to respond with clear policies that fill in the gaps left by the federal government's mandates, such as IDEA. At the school-level, the present study on special education identification for ELLs suggests that schools and educators have not been given proper guidance from administrators, and that, as a result, teachers and the relevant specialists tend to be unaware of the appropriate steps that can help alleviate disproportionality. An additional – though rarely visible – challenge is the pressures principals can face to not be seen as identifying too many students for special education. Beyond this, and more generally, a lack of information, guidance, and professional training from states and districts exacerbates the already complex process of separating indicators of disability (where they exist) and correctly managing and sequencing dual processes related to English language proficiency and need for special education services.

This is not so say that key actors at the state-, district-, and school-levels are completely ignorant of relevant laws, procedures, and protocols. To the contrary, we found individuals and policies with valuable information that could be used to limit disproportionality. For example, the [San Diego Unified School District \(2009\)](#) had policy guidance that mandated a special education eligibility team to engage with a student's ESL teacher and include them in the process. Research on limiting disproportionality for ELLs has found this to be an important practice, provided that the collaboration is meaningful ([Ortiz et al., 2011](#)).

Our findings also highlight that the following specific issues merit additional attention by researchers and policymakers. Clear policy guidance must exist in state and district policies. State policies might consider tracking ELLs with disabilities as a subgroup and mandating districts to develop systems and professional development opportunities focused on response to

intervention, ESL strategies and assessments, and professional learning communities. School districts might mandate that ESL teachers participate in all eligibility and IEP meetings for ELLs and that each school has a functioning RTI process in place. Both states and districts might invest more to ensure schools are appropriately staffed with ESL teachers and that trainings are readily available. Going forward, it will also be important to address these issues through carefully crafted state- and district-policy, professional development, and communication campaigns.

## 6. Conclusion

The current trend of rapid growth of ELL students is not just a US–Mexico border issue, and it is not a trend that will wane in the near future. Increasingly, schools across the US are enrolling ELL students with teachers and relevant specialists unprepared and unaware of important policies relevant to this student population. Moreover, the changing demographics of schools in the US require that policies are adapted and clarified for not only Hispanic ELLs but also other student populations that are subject to marginalization and inequitable educational outcomes (Ford, 2012). This exploratory study indicates that even states with the largest populations of ELLs are unprepared. Continued policy failure will be extremely costly for the affected students and their families in terms of educational achievement, not to mention the implications of this policy failure for the United States in general, which continues to grapple with how to prepare the growing influx into its schools of Latino students. By drawing attention to this issue and identifying potential areas of future lines of inquiry, it is our hope that researchers across a variety of educational and policy related disciplines will investigate relevant issues and provide much needed information for policymakers and practitioners. Furthermore, researchers should develop more comprehensive research plans to further explore special education eligibility processes for ELLs that include interviews from other stakeholders, including school psychologists, parents, and students. Research sites should not be limited to the border region as numerous states and districts are wrestling with the appropriate special education identification of ELL students.

The findings from this study hold implications for state education agency and school district administrations designing policy, as well as for researchers seeking to understand those policies and the implications these policies have on disproportionate identification of ELLs in special education. More research is required to further document the policies of state education agencies and local school districts because very little research is available at present. A more in-depth study that includes state education agency policies, school district policies, and an investigation into school level expertise and awareness of policies could enhance our understanding of how policies influence school action, how policies can modify school-level behaviors, and the best practices of states, districts, and schools where the disproportional representation of ELLs in special education is limited. Further research into school district policies can provide additional insights into the structures, policies, and professional development supports that effective districts create and use to avoid incorrect and harmful identification processes. Finally, future research of this nature can provide insights into why ELLs are being both under- and over-represented in special education and can inform state and district administrators' efforts in developing policies that might promote more just treatment of – and increased educational outcomes from – ELL students. It is our hope that this study has contributed to moving in that direction.

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